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[COUNSEL LISTED ON SIGNATURE PAGES]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

APPLE INC., a California corporation,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD., a
Korean corporation; SAMSUNG
ELECTRONICS AMERICA, INC., a New
York corporation; and SAMSUNG
TELECOMMUNICATIONS AMERICA,
LLC, a Delaware limited liability company,

Defendants.

Case No. 11-cv-01846-LHK

**INITIAL JOINT CASE
MANAGEMENT CONFERENCE
STATEMENT – CORRECTED
VERSION**

Date: August 24, 2011
Time: 2:00 pm
Place: Courtroom 4, 5th Floor
Judge: Hon. Lucy H. Koh

1 Pursuant to this Court’s Civil Local Rule 16-9, the parties jointly submit this Corrected
2 Case Management Statement and Proposed Order.¹ Apple counsel and counsel for Samsung
3 Electronics Co., Ltd., Samsung Electronics America, Inc., and Samsung Telecommunications
4 America, LLC (“Samsung”) met and conferred beginning on August 3, 2011.

5 **1. Jurisdiction and Service**

6 **Apple’s Statement:**

7 *For Apple’s Case*²

8 Apple contends that this Court has subject matter jurisdiction over Apple’s claims against
9 Samsung under 15 U.S.C. § 1121 (action arising under the Lanham Act); 28 U.S.C. § 1331
10 (federal question); 28 U.S.C. § 1338(a) (any Act of Congress relating to patents or trademarks);
11 28 U.S.C. § 1338(b) (action asserting claim of unfair competition joined with a substantial and
12 related claim under the trademark laws); and 28 U.S.C. § 1367 (supplemental jurisdiction).
13 Apple further contends that this Court has personal jurisdiction over the Defendants because each
14 has committed and continues to commit acts of infringement in violation of 35 U.S.C. § 271 and
15 15 U.S.C. §§ 1114, 1125, and places infringing products into the stream of commerce, with the
16 knowledge or understanding that such products are sold in the State of California, including in
17 this District.

18 Samsung does not contest jurisdiction or venue with regard to Apple’s claims. All named
19 parties have been served, and there are no unresolved issues relating to service of process.

20 *For Samsung’s Case*

21 Samsung contends that this Court has jurisdiction over its counterclaims for patent
22 infringement and declaratory relief pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338(a)

23 _____
24 ¹ The parties submit this Corrected Joint Case Management Conference Statement to clarify and
25 correct certain errors in the charts found in Section 17 comparing the parties' respective
26 scheduling proposals.

27 ² Because Apple believes that its case against Samsung (“Apple’s Case”) should be set for trial on
28 a separate track from Samsung’s case against Apple (“Samsung’s Case,” including Apple’s
related counterclaims in reply), Apple has made separate case management proposals where
appropriate.

1 & (b), 1367, 2201(a) and 2202. Apple agrees that, for purposes of Samsung's counterclaims
2 only, this Court has personal jurisdiction over Apple and that venue is proper in this District.
3 Apple notes, however, that Samsung originally filed its patent infringement counterclaims as a
4 separate action, but dismissed that action and refiled its counterclaims in this action when Apple
5 notified Samsung that it was moving for an expedited trial.

6 Apple contends that this Court has subject matter jurisdiction over Apple's counterclaims
7 in reply pursuant to 28 U.S.C. §§ 1338(a), 2201, and 2202, and 15 U.S.C. § 4, and 28 U.S.C. §§
8 1331, 1337. Apple further contends that this Court has personal jurisdiction over Samsung for
9 purposes of Apple's counterclaims in reply because Samsung has counterclaimed against Apple
10 in this District, and, in any event, Samsung places wireless communication devices in to the
11 stream of commerce knowing that such products will be sold in California.

12 All named parties have been served, and there are no unresolved issues relating to service
13 of process with respect to Samsung's case.

14 **Samsung's Statement:**

15 Samsung objects to Apple's attempt to put the two halves of this case on separate tracks
16 and therefore provides all of its proposals for the case as a whole. Apple purports that the Court
17 has subject matter jurisdiction over its claims and counterclaims under 15 U.S.C. § 1121, 28
18 U.S.C. §§ 1331, 1137, 1338(a), 1338(b), 1367, 2201, 2202, the Federal Patent Act, and Section 4
19 of the Sherman Act. The Court has jurisdiction over Samsung's counterclaims pursuant to 15
20 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338(a) & (b), 1367, 2201(a) and 2202. Neither party is
21 challenging personal jurisdiction for purposes of this action, and all parties have been served.

22 **2. Facts**

23 **Apple's Statement:**

24 *For Apple's Case*

25 The facts of this case are straightforward. Apple is a leading designer and manufacturer
26 of handheld mobile devices, personal computers, and portable media players. Apple's significant
27 investment in research and development has led to the creation of innovative technologies that
28 have made Apple's products, such as the iPhone, iPod touch, and iPad, instantly successful. At

1 the same time, Apple's design prowess has made these products immediately recognizable.
2 Apple protects its innovations through a broad range of intellectual property rights.

3 Rather than develop its own technology and designs, Samsung chose to copy Apple's.
4 Samsung designed its phones and tablet computers to mimic the look and behavior of Apple's
5 revolutionary products. On April 15, 2011, Apple filed this action seeking to stop Samsung's
6 widespread patent, trademark, and trade dress infringement. On April 19, Apple filed a motion
7 for expedited discovery, and on July 1, motions to expedite trial and for a preliminary injunction.
8 Apple has moved expeditiously to assert its rights in the intellectual property it is asserting.

9 *For Samsung's Case*

10 Seeking to obfuscate and delay Apple's claims, Samsung filed an Answer to the
11 Complaint on June 30 and brought counterclaims based on twelve disparate patents that are
12 unrelated to the subject matter of Apple's patents. These twelve patents, seven of which
13 purportedly pertain to public wireless communications standards, raise numerous legal, factual,
14 and technical issues that are completely unrelated to Apple's claims and should be severed and set
15 for trial on a separate track. Samsung itself does not believe that its claims require quick
16 resolution, because it — unlike Apple — has not moved for expedited relief.

17 Further, in response to Samsung's assertion of these twelve patents against Apple, Apple
18 brought counterclaims in reply seeking declaratory judgment of non-infringement and invalidity,
19 and for various breach of contract, antitrust, and unfair business practice-related claims, aiming to
20 halt Samsung's abusive assertion of its patents.

21 **Samsung's Statement:**

22 Samsung is one of the world's leading electronics companies, specializing in digital
23 products and media, semiconductors, memory, and system integration. Samsung has a long
24 history of groundbreaking innovation across a wide range of technologies. Samsung entered the
25 phone industry long before Apple, and is the largest provider by volume of mobile devices in the
26 United States and the second largest in the world. During the last half of 2010, Samsung sold
27 more Android-based devices worldwide than any other company, and this month shipped its 300
28 millionth phone. In 2001, Samsung broke the 1 cm technological barrier and sparked the ultra-

1 portable mobile phone revolution spurring dozens of competitors to slim down their design form
2 factors. Samsung's innovative contributions to the mobile device industry have been recognized
3 through numerous awards and Samsung's mobile device designs have won close to 60 awards
4 between 2007 and the beginning of 2011.

5 Despite a long history of innovation when it comes to the design and configuration of
6 mobile devices, Apple has accused Samsung of "copying" the "look and feel" of its iPhone, iPod
7 touch, and iPad products. Apple is attempting to prevent Samsung from using common,
8 functional, obvious and otherwise unprotectable elements of design patents, trademarks and trade
9 dress, rather than seeking to innovate in the face of legitimate competition from Samsung. Apple
10 is not entitled to legal protection for such functional and commonly-used device features as
11 rectangular shapes with rounded edges, rectangular screens with black borders, rounded-square
12 shaped icons for applications, nor for common and descriptive metaphors, such as a handset for a
13 phone application, a yellow legal pad for a notes application, and gears for settings. Indeed,
14 Apple's claimed design elements, taken alone and together, were commonplace long before
15 Apple's alleged inventions, and the Ninth Circuit has rejected Apple's previous efforts to
16 monopolize the use of routine metaphors for icons. Apple further alleges that Samsung has
17 infringed several utility patents relating to graphic user interface and multi-touch functionality,
18 which Samsung will show are invalid, unenforceable and not infringed by the accused Samsung
19 products.

20 Samsung further seeks cancellation of Apple's allegedly registered trademarks and trade
21 dress, in addition to declarations of invalidity for all asserted IP, including the utility and design
22 patents. To streamline the litigation and conserve resources of both parties and the Court,
23 Samsung also asserts twelve of its own utility patents against Apple as counterclaims, which
24 cover a cover a broad scope of smart phone and other mobile device technology, including
25 technology related to data encoding and decoding, regulating transmission power of data
26 channels, increasing efficiency of data transmission, combining data streams to enable
27 simultaneous voice and high-speed data, and scrambling codes. The Samsung patents also cover
28 multitasking on mobile devices, displaying local time on a phone for various cities around the

1 world, and storing, viewing and transmitting images in digital cameras and camera phones.
2 Samsung seeks damages for patent infringement, treble damages for willful infringement,
3 injunctive relief, prejudgment interest, and attorneys' fees and costs for the entire dispute.

4 **3. Legal Issues**

5 **Apple's Statement:** The legal issues in dispute are those raised in Apple's Amended
6 Complaint, Samsung's counterclaims, Apple's counterclaims in reply, and the parties' various
7 motions, including the following:

- 8 • Whether Apple's asserted utility and design patents are valid;
- 9 • Whether Samsung's phones and tablet computers infringe Apple's asserted utility
10 and design patents;
- 11 • Whether Apple has protectable iPhone and iPad trade dress and trademarks;
- 12 • Whether Samsung's phones and tablet computers misappropriate Apple's iPhone
13 and iPad trade dress and constitute unfair competition and false designation of
14 origin;
- 15 • Whether Samsung's phones and tablet computers infringe Apple's registered trade
16 dress and trademarks;
- 17 • Whether Samsung's phones and tablet computers dilute the value Apple's trade
18 dress and trademarks;
- 19 • Whether Samsung's asserted utility patents are valid;
- 20 • Whether Apple infringes Samsung's asserted utility patents;
- 21 • Whether Samsung has breached contractual obligations relating to the licensing of
22 its asserted patents, including its obligation to license declared-essential patents on
23 Fair, Reasonable, and Non-Discriminatory ("FRAND") terms;
- 24 • Whether Samsung has committed antitrust violations and acts of unfair
25 competition in connection with standard setting activities and its assertion of
26 claims over certain technology standards;
- 27 • Whether Apple's Case and Samsung's Case should be severed and set for trial on
28 separate tracks;
- Whether Apple's Case should proceed on an expedited schedule to an early trial;
- Whether Apple's should be granted a preliminary injunction against certain of
Samsung's products; *and*
- Whether Apple's counsel Bridges & Mavrakakis LLP should be disqualified from
representing Apple.

1 **Samsung's Statement:**

- 2 • The proper construction to be given to the claims of the patents in suit as required
3 by Markman, et al. v. Westview Instruments, Inc., 517 U.S. 370 (1996).
- 4 • Whether the Apple patents are invalid for failing to satisfy one or more of the
5 conditions for patentability specified in Title 35 of the United States Code,
6 including without limitation, Sections 101, 102, 103 and 112.
- 7 • Whether Apple's patents are unenforceable for any reason raised by Samsung's
8 affirmative defenses or otherwise.
- 9 • Whether the Samsung patents are not invalid for failing to satisfy one or more of
10 the conditions for patentability specified in Title 35 of the United States Code,
11 including without limitation, Sections 101, 102, 103 and 112.
- 12 • Whether Samsung is not infringing and has not infringed any valid claim of the
13 Apple patents.
- 14 • Whether Apple is infringing and has infringed any valid claim of the Samsung
15 patents.
- 16 • Whether the product design and product user interface of the Samsung Accused
17 Products cause confusion, cause mistake, or deceive consumers as to the
18 affiliation, connection, or association of Samsung with Apple, or as to the origin,
19 sponsorship, or approval by Apple of Samsung's goods, services, or commercial
20 activities.
- 21 • Whether the product design and product user interface of the Samsung accused
22 products enables Samsung to benefit unfairly from Apple's reputation and success.
- 23 • Whether the product design and product user interface of the Samsung accused
24 products is likely to cause dilution by blurring of any valid Apple trade dress.
- 25 • Whether the Apple trade dress and trademarks are invalid and/or unenforceable
26 including, but not limited to, because they lack secondary meaning, are not
27 inherently distinctive, are functional, are generic, or have been abandoned.
- 28 • Whether any acts and practices by any Party are likely to mislead or deceive the
 general public and therefore constitute fraudulent business practices in violation of
 California Business & Professions Code § 17200, et seq.
- Whether the claims at issue in this case are exceptional or willfully violated,
 entitling the parties profits, treble actual damages, an award of costs, and
 reasonable attorneys' fees pursuant to 15 U.S.C. § 1117(a).
- Whether any party is likely to be irreparable harmed and is thus entitled to
 injunctive relief on their claims.
- Whether Samsung is entitled to its costs and attorneys fees because this case is
 exceptional.

29 **4. Motions**

30 Apple has filed the following motions:

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- A motion for expedited discovery on April 19, 2011 (D.N. 10), which the Court granted in part on May 18, 2011 (D.N. 52);
- A motion to shorten time for briefing and hearing on its motion for expedited discovery on April 19, 2011 (D.N. 12), which the Court granted in part on April 26, 2011 (D.N. 26);
- A motion for an expedited trial on Apple’s claims on July 1, 2011 (D.N. 83), which is scheduled to be heard on August 24, 2011, and which includes the issue of whether Apple’s claims should be set for expedited trial on a separate track from Samsung’s counterclaims;
- A motion to shorten time for briefing and hearing on its motion for an expedited trial and for an early CMC on July 1, 2011 (D.N. 84), which the Court denied on July 12, 2011 (D.N. 110);
- A motion for preliminary injunction, on July 1, 2011 (D.N. 86), which is scheduled to be heard on October 13, 2011; and
- Various administrative motions.

Apple is considering filing motions for summary judgment on one or more claims, defenses, or issues.

Samsung has filed the following motions:

- A motion to relate cases on May 11, 2011 (D.N. 41),³ based on which the Court issued a related case order on May 23, 2011 (D.N. 55);³
- A motion to compel discovery on May 27, 2011 (D.N. 56), which the Court denied on June 21, 2011 (D.N. 79);
- A motion to disqualify Bridges & Mavrakakis, one of Apple’s counsel, on July 11, 2011 (D.N. 101), which is scheduled to be heard on August 24, 2011;
- A motion to dismiss and strike Apple’s counterclaims, on August 15, 2011 (D.N. 153), which is scheduled to be heard on September 22, 2011; and
- Various administrative motions.

Other motions may be filed as the case progresses, and the parties reserve their right to address the same.

³ Samsung has since dismissed the related case and refiled some of those claims as counterclaims in this action.

1 **5. Amendment of Pleadings**

2 **Apple's Statement:**

3 Apple may amend its claims as pending patent applications and other intellectual property
4 mature into enforceable rights, and as Samsung releases new infringing products.

5 **Samsung's Statement:**

6 Samsung may amend its pleadings to reflect information obtained through discovery and
7 to raise equitable defenses, but does not expect to dismiss any of its counterclaims. Samsung may
8 further amend its complaint as Apple releases new infringing products. Samsung has proposed a
9 deadline of December 23, 2011 for all amendments to pleadings.

10 **6. Evidence Preservation**

11 The parties recognize that the burden of suspending normal policies regarding electronic
12 backup systems for disaster recovery outweighs the potential relevance of documents that might
13 be captured by some interim backup on an unknown date. Therefore, the parties agree that each
14 party can continue the standard disaster recovery systems protocol used by that party.

15 **7. Disclosures**

16 The parties have not served initial disclosures. Under FRCP 26(a)(1)(C), the parties are
17 required to serve initial disclosures within 14 days of the Rule 26(f) conference, unless changed
18 by stipulation. The parties have agreed, subject to the Court's approval, to serve their initial
19 disclosures on September 7, 2011.

20 **8. Discovery**

21 **a. Discovery Taken to Date**

22 **Apple's Statement:**

23 Samsung provided expedited discovery of certain product samples on June 17, 2011.
24 Samsung has completed discovery of Apple for Samsung's opposition to Apple's Motion for
25 Preliminary Injunction. Apple produced a significant number of documents spanning email,
26 source code, CAD files, invention and patent prosecution files, licenses, marketing and
27 advertising information, third party market research, expert reports, and deposition and trial
28 transcripts. Apple has also responded to a large number of interrogatories and made multiple fact

1 and expert witnesses available for deposition. Apple has propounded written discovery on
2 Samsung, and its preliminary injunction discovery period is scheduled to begin shortly after
3 Samsung files its opposition brief.

4 On August 3, 2011, both Apple and Samsung served general discovery concerning this
5 action in the form of interrogatories and requests for production of documents and things, with
6 objections and responses due on September 2.

7 Just days before its opposition to Apple's preliminary injunction motion is due, Samsung
8 continues to raise false complaints about the scope of Apple's related production, which Apple
9 expedited. Samsung ignores that Apple made four fact witnesses and its two experts available for
10 deposition. Samsung also ignores that Apple searched for, reviewed, and produced thousands of
11 responsive documents and e-mails and hundreds of drawings in the limited timeframe for
12 Samsung's preliminary injunction discovery. Rather than address the breadth of Apple's
13 production, Samsung confuses sketches and notebooks, continues to demand deponents on
14 30(b)(6) topics that Apple has long explained were unreasonable and overly broad, and insists
15 that Apple respond to discovery that Samsung served after the Court's deadline.

16 **Samsung's Statement:**

17 Samsung provided expedited discovery of certain product samples on June 17, 2011.
18 Samsung has undertaken discovery of Apple for Samsung's opposition to Apple's Motion for
19 Preliminary Injunction. Apple has yet to address numerous outstanding issues with the discovery
20 related to the Preliminary Injunction motion. These include Apple's misrepresentation that
21 design patent inventor notebooks did not exist – a representation that was revealed as false only at
22 the recent deposition of an Apple designer and named inventor on the design patents asserted on
23 Apple's Preliminary Injunction motion – and its continued refusal to produce those notebooks.
24 Apple also failed to produce a witness on a number of 30(b)(6) topics, despite representations on
25 the record to the contrary, and failed to properly answer interrogatories relating to the facts at
26 issue on the Preliminary Injunction motion.

1 Both sides also have served general discovery in the form of interrogatories and requests
2 for production of documents and things on August 3, with objections and responses due
3 September 2.

4 **b. Limitations on Discovery**

5 The parties agree that at depositions that require an interpreter, there shall be an official
6 interpreter hired by the side taking the deposition. The parties further reserve the right to hire
7 their own interpreter to verify the translation by the official interpreter.

8 **Apple's Statement:**

9 Because Apple's Case and Samsung's Case are distinct and should be separated, Apple
10 proposes separate limits on discovery for each case.

11 Apple proposes that none of the discovery related to its motion for a preliminary
12 injunction should count against the following limits.

13 ***Depositions***

14 *Standard:* 10 depositions (FRCP 30(a)(2), 31(a)(2))

15 *Proposal for Apple's Case:* 150 hours of total deposition time for each side (i.e., 150
16 hours for Apple and 150 hours for the Samsung entities collectively); 7 hour-limit for individual
17 depositions; individual and 30(b)(6) depositions count against total time, but third-party and
18 expert depositions do not; depositions requiring an interpreter count as half time.

19 *Proposal for Samsung's Case:*

20 325 hours of total deposition time for each side (i.e., 325 hours for Apple and 325 hours
21 for the Samsung entities collectively); 7 hour-limit for individual depositions; individual and
22 30(b)(6) depositions count against total time, but third-party and expert depositions do not;
23 depositions requiring an interpreter count as half time; 75 hours maximum total 30(b)(6)
24 deposition time for each side.

25 ***Interrogatories***

26 *Standard:* 25 interrogatories (FRCP 33(a)(1))

27 *Proposal for Apple's Case:* 35 interrogatories

28 *Proposal for Samsung's Case:* 60 interrogatories

1 ***Requests for Production***

2 No limit in FRCP.

3 *Proposal for Apple’s Case:* no limit.

4 *Proposal for Samsung’s Case:* no limit.

5 ***Requests for Admission***

6 No limit in FRCP.

7 *Proposal for Apple’s Case:* 100 requests for admission; requests for admission of the
8 authenticity of a document do not count against the limit.

9 *Proposal for Samsung’s Case:* as above.

10 **Samsung’s Statement:**

11 Apple’s proposal that the parties be treated differently for discovery purposes – and not
12 coincidentally in ways that uniformly would favor Apple – is untenable as well as unfair.
13 Samsung believes that the Court should set one limit for the entire case and let each side decide
14 how to allocate their time between claims and counterclaims. Therefore, Samsung is proposing
15 overall case limits.

16 ***Depositions***

17 Samsung proposes 450 hours of fact depositions for the entire case. Rule 30(b)(6)
18 deposition hours should be counted towards the 450 hour limit for each side; third party and
19 expert depositions do not count toward the total. At depositions that require an interpreter, the
20 parties agree that there shall be an official interpreter hired by the side taking the deposition.
21 Samsung further reserves the right its own interpreter to verify the translation by the official
22 interpreter. Samsung proposes that every 10 hours of deposition time requiring interpreters count
23 as 7 hours towards the 450 hour total.

24 ***Interrogatories***

25 Samsung proposes 80 interrogatories per side.

26 ***Requests for Admission***

27 No limit on requests for admission is necessary.

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c. Discovery of ESI

Apple has proposed that the parties enter an ESI stipulation addressing preservation, collection, and production of ESI. Samsung agrees that the parties should work out a stipulation and initially proposes that ESI be produced via reasonable word searches with the search terms agreed upon by both sides.

d. Protective Order

The parties are still negotiating the scope of a protective order to govern this action. In the interim, the parties are operating under the Interim Protective Order provided by the Local Patent Rules, as modified by stipulation for Samsung’s expedited discovery. The parties are discussing and considering cross-use provisions to account for additional foreign and domestic litigations between the parties.

e. Privilege and Privilege Logs

The parties have agreed to the following procedures with respect to privilege logs:

The parties are not required to log Privileged Materials dated after April 15, 2011 (the “cut-off date”). Information concerning documents or things otherwise protected by the attorney-client privilege, work product immunity, or other privilege or protection (“Privileged Materials”) that were created after the cut-off date do not need to be included on any privilege log. In addition, Privileged Materials created by or on behalf of litigation counsel or exchanged with litigation counsel, regardless of their date, do not need to be included on any privilege log. This does not include materials prepared by or on behalf of the law firms representing the parties in their capacity as prosecution counsel. The parties reserve the right to request logs of Privileged Materials created after April 15, 2011 where good cause exists.

The parties shall exchange privilege logs on September 7, 2011, for all documents produced prior to August 25, 2011. For each additional set of documents produced on or after August 25, 2011, the producing party shall provide a privilege log within thirty (30) days after each production, logging any documents withheld from production under a claim of privilege.

- 1 • **6/27/2011:** *Apple Inc. v. Samsung Electronics Co., Ltd.* (Court of Justice, the
2 Hague, Netherlands) (KG 11-731)
- 3 • **6/28/2011** *In the Matter of Certain Mobile Electronic Devices* (ITC Case *Samsung*
4 *v. Apple* 337-TA-794)
- 5 • **6/29/2011:** *Samsung Elec. Co. Ltd. et al. v. Apple Inc.* (D. Del. 11-cv-573-LPS)
- 6 • **6/29/2011:** *Samsung Electronics Italia s.p.a. v. la Apple Inc.* (Tribunale Di Milano,
7 Italy)
- 8 • **6/29/2011:** *Samsung Elec. Co. Ltd. v. Apple Retail UK et al.* (UK High Court of
9 Justice Chancery Div. Patents Court HC 11 CO 2180)
- 10 • **7/5/2011:** *In the Matter of Certain Electronic Digital Media Devices and*
11 *Components Thereof* (ITC Case *Apple v. Samsung* 337-TA-796)
- 12 • **7/8/2011:** *Samsung Electronics Co. Ltd and Samsung Electronics France v. Apple*
13 *France et al.* (Tribunal De Grande Instance De Paris 11/10464)
- 14 • **7/28/2011:** *Apple Inc. v. Samsung Electronics Ltd. Co.* (Federal Court of Australia,
15 New South Wales District Registry, General Division) (NSD1243/2011)
- 16 • **8/4/2011:** *Apple Inc. v. Samsung Electronics GmbH* (Düsseldorf Regional Court)

17 Apple has obtained provisional relief in two of these foreign actions. On August 1, 2011,
18 in response to Apple's application for a preliminary injunction, the Federal Court of Australia for
19 New South Wales entered an order confirming the undertaking of Samsung Electronics Co., Ltd.
20 and its Australian affiliate that Samsung will not import, offer for sale or sell in Australia the
21 Galaxy Tab 10.1 without Apple's permission pending resolution of Apple's application, and that
22 Samsung will provide samples of the Galaxy Tab 10.1 to Apple at least seven days before the
23 intended date of distribution.

24 On August 9, 2011, the German Regional Court in Düsseldorf issued an interim injunction
25 prohibiting Samsung Electronics Co., Ltd. and its German affiliate from making, offering for sale,
26 selling, importing, exporting, or stocking the Galaxy Tab 10.1 within the European Union (with
27 the exception of Netherlands as to Samsung Electronics Co., Ltd). On August 16, the
28 German court suspended enforcement of the interim injunction with regard to Samsung
29 Electronics Co., Ltd. for the territory outside Germany. This modification does not limit the
30 scope of the interim injunction as to Samsung's German affiliate.

1 Apple denies Samsung's incorrect arguments about the overseas provisional relief Apple
2 has obtained, which Samsung inserted shortly before this statement was due. The injunction in
3 Germany was based on the court's inspection of a physical sample of Samsung's infringing
4 product, for example. Apple reserves the right to address Samsung's arguments them further at
5 the Case Management Conference.

6 **Samsung's Statement:**

7 Samsung agrees that the list of foreign actions listed by Apple is accurate. However, even
8 assuming that Apple's gratuitous claims about the preliminary proceedings in those actions could
9 have any relevance to case management here, Apple misstates them. In Australia, Apple
10 erroneously moved to enjoin the sale of a version of the Galaxy Tablet Samsung never planned to
11 release in Australia. To avoid wasting the resources of the Court or the parties on a device that
12 Samsung would not even be selling in Australia, Apple and Samsung entered into an agreement
13 in which Samsung would not release the U.S. version of the tablet in that country—which it had
14 never intended to do. In Germany, Apple secretly filed for an injunction, without any notice to
15 Samsung, and with reportedly doctored evidence. After initially entering the injunction, the
16 German court reversed itself and has since allowed sales of the Galaxy Tab to resume throughout
17 Europe, with the exception of Germany itself. Samsung is challenging the remaining limited
18 portion of the injunction and expect it to likewise be overturned. Samsung has also filed an
19 application seeking to cancel the design registration asserted by Apple in Germany (equivalent to
20 the D504,889 patent alleged in this action) with the Office of Harmonization for the Internal
21 Market.

22 **11. Relief**

23 **Apple's Statement:**

24 *The Apple Case*

25 The relief Apple seeks in its case against Samsung is detailed in its Amended Complaint
26 and other pleadings, including its Motion for a Preliminary Injunction. In summary, Apple seeks:

- 27
 - A judgment that Samsung has infringed one or more claims of Apple's asserted
28 patents;

- 1 • An order preliminarily and permanently enjoining Samsung from further
2 infringement of Apple's asserted patents;
- 3 • A judgment awarding damages to compensate for Samsung's infringement,
4 including treble damages for willful infringement, and prejudgment interest;
- 5 • A judgment awarding Apple all of Samsung's profits together with prejudgment
6 interest;
- 7 • An order preliminarily and permanently enjoining Samsung from further
8 infringement or dilution of Apple's asserted trademarks and trade dress;
- 9 • Actual damages suffered by Apple as a result of Samsung's unlawful conduct, in
10 an amount to be proven at trial; and
- 11 • Various other relief, including reasonable funds for future corrective advertising,
12 an accounting of Samsung's profits, treble damages, punitive damages pursuant to
13 the California Civil Code, restitutionary relief, costs of suit and reasonable
14 attorneys fees, and any other relief to which Apple may be entitled.

11 *The Samsung Case*

12 Apple seeks the following relief in Samsung's case against Apple:

- 13 • An order dismissing Samsung's Counterclaims in their entirety, with prejudice;
- 14 • A judgment in favor of Apple and against Samsung;
- 15 • A judgment finding that Samsung is liable for breach of contract, promissory
16 estoppel, violation of Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2,
17 the California Cartwright Act, California Business and Professions Code, §§
18 16720, et seq, and/or violation of Cal. Bus. & Prof. Code § 17200;
- 19 • A judgment against Samsung for the amount of damages Apple proves at trial and,
20 as a legal or equitable remedy, judgment declaring that Samsung's purported
21 essential patents are unenforceable by virtue of standards-related misconduct
22 including (i) Samsung's breach of its FRAND commitments and/or (ii) Samsung's
23 breach of its disclosure obligations at ETSI;
- 24 • Pursuant to Section 4 of the Clayton Act, 15 U.S.C. § 15, and/or California
25 Business and Professions Code, §§ 16720, et seq., a judgment against Samsung for
26 treble the amount of Apple's damages, an injunction barring Samsung from
27 demanding from Apple non-FRAND terms for Samsung's purportedly essential
28 patents, and an award to Apple of all reasonable attorneys' fees and costs;
- A judgment that Samsung has violated the California Unfair Competition Law;
- A judgment declaring that, to the extent any of the alleged inventions described in
and allegedly covered by the purportedly essential patents are used, manufactured,
or sold by or for Apple, its suppliers, and/or its customers, Apple is licensed by
virtue of Samsung's FRAND commitments or, in the alternative, Apple has the
irrevocable right to be licensed on FRAND terms under those patents;
- A judgment declaring that Samsung is not entitled under any circumstances to seek
injunctive relief preventing Apple from practicing the UMTS standard, and that

1 Samsung is not otherwise entitled to use its purported essential patents to pursue
2 injunctive relief;

- 3 • A judgment declaring that Samsung's purported essential patents are
4 unenforceable by virtue of Samsung's waiver of its right to enforce its purported
5 essential patents;
- 6 • A declaration that Apple has not infringed, and is not infringing, each of the
7 Samsung asserted patents; and
- 8 • A declaration that one or more of the claims of each of the Samsung asserted
9 patents are invalid, void and/or unenforceable against Apple.

10 **Samsung's Statement:**

11 Samsung seeks:

- 12 • Dismissal of Apple's claims with prejudice and entry of judgment in its favor;
- 13 • A judgment that Apple has infringed one or more claims of Samsung's asserted
14 patents;
- 15 • An order preliminarily and permanently enjoining Apple from further infringement
16 of Samsung's asserted patents;
- 17 • Damages in an amount to be proven at trial, including treble damages for willful
18 infringement and prejudgment interest;
- 19 • Apple's profits together including prejudgment interest;
- 20 • A declaratory judgment that Samsung has not infringed any of the claims of any
21 design or utility patent asserted by Apple;
- 22 • A declaratory judgment that all of the design and utility patents asserted by Apple
23 are invalid;
- 24 • A declaratory judgment of no Federal false designation of origin under 15 U.S.C.
25 § 1125(a);
- 26 • A declaratory judgment of no infringement of any asserted Apple trademarks or
27 trade dress;
- 28 • A declaratory judgment of no dilution of any asserted Apple trade dress;
- A declaratory judgment that all of the trademarks and trade dress, including
application, asserted by Apple are invalid;
- Cancellation of all trademarks and trade dress, including application, asserted by
Apple are invalid;
- A declaratory judgment of no violation of the California Business and Professional
Code § 17200 et seq.;
- A declaratory judgment of no violation of the law of unjust enrichment; and

- A declaration that this case be declared "exceptional" under 35 U.S.C. § 285 and an award of Samsung's attorneys' fees, expenses, and costs.

12. Settlement and ADR

The parties agree to private mediation before a neutral and at a time and date that is mutually acceptable to both parties.

13. Consent to Magistrate Judge for All Purposes

The parties do not consent to having a magistrate judge conduct all further proceedings including trial and entry of judgment.

14. Other References

The Parties do not believe that this case is suitable for reference to binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

15. Narrowing of Issues and Severance of Claims

Apple's Statement:

Apple requests that the Court sever Samsung's counterclaims and schedule them for trial on a separate track for the reasons in Apple's Reply In Support of Motion for Expedited Trial (D.N. 131 at 8-12) and in its Opposition to Samsung's Motion to Disqualify (D.N. 133 at 25-26). Apple has shown an urgent need for expedited relief. Samsung's infringing products threaten to erode the distinctiveness of core Apple products. New infringing Samsung products are rapidly entering the U.S. market. Samsung has stated that it will make a "major new product announcement" at the end of this month. All indications are that Samsung will announce the U.S. release of its next generation Galaxy S2 smartphone. Apple understands that a new infringing Samsung tablet, called the Tab 8.9, is also coming. Apple needs early adjudication of its claims so it can put a stop to Samsung's copying of Apple's designs and technology now.

Samsung, in contrast, has never sought expedited relief on its counterclaims, most of which involve patents that Samsung contends are essential to implement telecommunication standards. Samsung is bound to license these patents on Fair, Reasonable and Non-Discriminatory ("FRAND") terms. Injunctive relief is not and never will be an issue as to those patents.

1 Apple's claims are already on a faster track, having been the subject of multiple motions
2 and substantial expedited discovery taken in connection with Apple's preliminary injunction
3 motion. In contrast, no discovery has been taken on Samsung's counterclaims. Samsung's
4 counterclaims will require extensive discovery and briefing of completely distinct issues —
5 including unrelated technology and Samsung's violation of its obligation to license patents that it
6 contends are essential to implement telecommunications standards. (D.N. 131 at 9-11.)
7 Samsung's counterclaims should not be allowed to delay the trial of Apple's claims, especially
8 since Samsung added them to this case in a transparent attempt to slow down Apple's case. (*Id.*
9 at 11-12.)

10 By any measure, combining Apple's claims and Samsung's claims would make the case
11 too large and too complex for any single jury. The technologies are varied. The legal issues,
12 including Apple's antitrust counterclaims, are many. Even Samsung believes that four weeks
13 would be needed to try the combined claims. Apple views that as unrealistic, and indeed
14 Samsung seems to agree, having expressly stated that it "reserves the right to seek additional
15 time". Urgency and logic dictate that the cases be split as Apple has proposed.

16 Samsung has asserted that the issue of setting Apple's claims for a separate, expedited
17 trial is not properly before the Court. Apple moved, however, for an order setting "an expedited
18 schedule leading to a trial on *Apple's* claims...." (Apple's Motion for Expedited Trial on its
19 Claims, D.N. 83 at 2 (emphasis added); *see* D.N. 83-1 (proposed order setting an expedited
20 schedule "as to Apple's claims in this case").)

21 Scheduling Apple's claims for separate trial is clearly a proper issue for the Case
22 Management Conference. Rule 16(c)(2)(M) of the Federal Rules of Civil Procedure authorizes
23 the Court to "consider and take appropriate action" at the Case Management Conference on
24 "ordering a separate trial under Rule 42(b) of a claim, counterclaim, crossclaim, third-party claim,
25 or particular issue." This District's Standing Order for All Judges on the Contents of the Joint
26 Case Management Conference Statement requires the parties to address the subject of
27 "Narrowing of Issues," including "any request to bifurcate issues, claims, or defenses."
28

1 Federal Rule of Civil Procedure 21 authorizes the Court to “sever any claim against a
2 party” either “[o]n motion *or on its own.*” Fed. R. Civ. P. 21 (emphasis added). The Northern
3 District of California has exercised this authority to “sever claims *sua sponte.*” *Khanna v. State*
4 *Bar of Cal.*, No. C-07-2587 EMC, 2007 WL 2288116, at *2 (N.D. Cal. Aug. 7, 2007) (order
5 severing claims under Rule 21) (“Although neither party has moved for severance in the instant
6 case, the Court may sever claims *sua sponte.*”) Courts have also ordered separate trial of claims
7 under Rule 42(b), even without a motion. “Regardless of whether this action is construed as
8 severance of particular plaintiffs and their claims under Rule 21, or construed as an order for
9 separate trials under Rule 42(b), this Court has the power sua sponte to order such action and has
10 decided to exercise it.” *In re All Asbestos Cases Pending in the U.S. Dist. Court for the Dist. of*
11 *Maryland*, No. BML-1, 1983 WL 808161, at *4 (D.Md. Dec. 16, 1983); *see Richmond v. Weiner*,
12 353 F.2d 41, 44 (9th Cir. 1965) (trial court may order separate trial of issues “in its discretion”
13 and “upon its own motion”); 9A Charles Alan Wright, et al., Fed. Prac. & Proc. § 2388 (3d ed.)
14 (“A formal motion is not required ... because district court may order separate trials on its own
15 motion”) (footnote omitted).

16 **Samsung’s Statement:**

17 Rather than filing a noticed motion, as the Rules require and which would enable the
18 parties to fully brief and the Court adequately evaluate the issue, Apple continues to interject its
19 desire to sever Samsung's counterclaims into random filings in this case. After repeatedly
20 delaying the parties' exchange of proposed case management statements, and after 4 pm on the
21 day before the parties are required to file this Joint statement, Apple ambushed Samsung with a
22 statement including what should be styled as a motion to sever. Apple's continued refusal to
23 properly put this issue before the Court demonstrates that it either is not serious about the issue or
24 is afraid that allowing full briefing would only serve to further expose the lack of merit in Apple's
25 position. Apple's argument is improper for a case management statement, and on that basis alone
26 should be disregarded by the Court.

27 But even if it were considered in this context, Apple’s request is meritless. First and
28 foremost, Apple ignores the Court’s prior decision (over Apple’s opposition) to relate the two

1 cases that the parties filed against each other. To state the obvious, where two separately filed
2 cases have been deemed related, it would be improper and inefficient to sever the same claims
3 which are now styled as counterclaims. Although the Court's order to relate should be dispositive
4 of Apple's belated attempt to rehash this issue, Samsung briefly addresses Apple's arguments and
5 further requests that, if the Court is inclined to consider Apple's improper request, Samsung be
6 allowed to submit an opposition brief.

7 Apple makes three arguments to justify its improper request to sever. First, Apple asserts
8 that its claims are "straightforward." However, Apple fails to explain how its twenty-two claims
9 for relief, involving eight utility patents spanning differing types of complex technology, seven
10 design patents, and over a dozen trademark and trade dress registrations and applications are
11 "more suitable for expedited disposition." Second, Apple argues that the potential release of new
12 Samsung products supports its request for expedited relief. The fact Apple only moved for a
13 preliminary injunction against three Samsung smart phones—and not on the basis of the
14 trademark and trade dress claims used to bolster its motion for expedited discovery—belies any
15 claim that Apple is facing harm that justifies expedited relief, much less expedited disposition of
16 only its claims. Indeed, this Court previously informed Apple of this very point: "The Court has
17 already granted Apple expedited discovery, thereby providing Apple an opportunity to obtain
18 preliminary relief in this action....The Court agrees with Samsung that the length of time Apple
19 has been aware of its claims and the long history of infringement alleged in the complaint
20 undermined Apple's claims of urgency...." (Dkt. No. 110 at 2.) Finally, Apple has provided no
21 rationale as to why Samsung's claims will "delay the trial of Apple's claims." Samsung's
22 proposed schedule adheres to the local patent rules for both sides, regardless of when the patents
23 were added to the case.

24 Apple's singular, one-sided focus on expediting its claims while avoiding requirements of
25 actually filing for a preliminary injunction, ignores the waste of resources and prejudice that
26 severance would have. Apple's proposed schedule delays trial of Samsung's claims until June
27 2013 at the earliest, which certainly does not further the interests of judicial economy. *See, e.g.,*
28 *Vitronic Corp. v. Conceptronic, Inc.*, 1993 WL300882 *2 (D.N.H. 1993) ("The court is not

1 persuaded that a second phase of discovery and trial on a claim which will nonetheless require
2 resolution independent from that required for infringement liability will result in the most
3 efficient just final disposition of the litigation."). The delay will also prejudice Samsung and
4 impose additional burdens on the Court and the parties. Since many Samsung employees relevant
5 to both parties' claims reside in Korea, it would be more cost effective for the witnesses to be
6 deposed once, on all issues and claims. *See Sumitomo Mitsubishi Silicon Corp. v. MEMC Elec.*
7 *Materials, Inc.*, No. C 05-2133, at *3, n.2 (N.D. Cal. Dec. 6, 2005). Furthermore, if Apple's
8 unfair proposal were adopted, evidence is likely to be lost in the interim before trial of its claims.
9 One of Apple's declarants in support of its preliminary injunction motion has already left the
10 company, and it is likely that in the next two years additional important witnesses (and evidence)
11 will become unavailable. *Id.* (denying motion to sever antitrust claims in part because of risk of
12 lost evidence, including departure of employees from defendant company). Rather than invite
13 disputes regarding the scope of discovery and repeated deposition of experts and fact witnesses,
14 discovery of the claims should proceed together, and the claims should be tried together. *Id.*
15 Samsung anticipates that it will file motions for summary judgment to narrow the issues in the
16 case and reduce the scope of any potential trial.

17 **16. Expedited Schedule**

18 Apple believes that its claims against Samsung are suitable for handling on an expedited
19 schedule, as detailed in Apple's pending Motion for an Expedited Trial. Samsung opposes this
20 motion, as well as any attempt to sever Samsung's counterclaims. The motion is fully briefed and
21 will be heard by the Court on August 24, 2011. Samsung does not believe it is appropriate to
22 expedite this case.

23 **17. Scheduling**

24 **Apple's Statement:**

25 In its Motion for an Expedited Trial, Apple proposed a schedule for all aspects of the case
26 that would lead to trial beginning on February 1, 2012. Due to the Court's Order Denying
27 Apple's Motion to Shorten Time on its Expedited Trial Motion, the hearing on Apple's Expedited
28 Trial Motion will be held concurrently with the Case Management Conference on August 24,

1 which is one month later than Apple had proposed. Accordingly, Apple has revised its expedited
 2 schedule to lead to trial on Apple's claims beginning March 7, 2012, as set forth in the table
 3 below.

4 Samsung has not sought expedited relief on its claims against Apple. Rather, it has
 5 asserted its claims as counterclaims in this action in order to delay resolution of Apple's claims.
 6 There is no reason that these cases should proceed on the same schedule. Indeed, Samsung's
 7 case will require additional discovery concerning Samsung's violation of its FRAND licensing
 8 obligation and its misconduct in the standards setting process, and Apple's related breach of
 9 contract, unfair competition, and antitrust counterclaims. Accordingly, Apple proposes that
 10 Samsung's claims be set for trial on a separate, non-expedited track, as set forth in the table
 11 below.

12 ***Comparison of Proposed Schedules for Apple's Case:***

Event	Apple's Proposal	Samsung's Proposal
Apple serves infringement contentions on Apple's patents (Patent L.R. 3-1)	Aug. 24, 2011	Sept. 7, 2011
Apple produces documents related to infringement contentions on Apple's patents (Patent L.R. 3-2)	Aug. 24, 2011	Sept. 7, 2011
Case Management Conference	Aug. 24, 2011	Aug. 24, 2011
Apple proposes claim terms for construction on Apple's patents (Patent L.R. 4-1)	Aug. 24, 2011	Nov. 7, 2011
Initial Disclosures Due	Sept. 7, 2011	Sept. 7, 2011
Samsung serves invalidity contentions on Apple's patents and produces required documents (Patent L.R. 3-3, 3-4)	Sept. 19, 2011	Oct. 24, 2011
Samsung proposes claim terms for construction on Apple's patents (Patent L.R. 4-1)	Sept. 19, 2011	Nov. 7, 2011
Parties exchange preliminary claim constructions on Apple's patents and identify supporting evidence and experts (Patent L.R. 4-2)	Sept. 26, 2011	Dec. 5, 2011

Event	Apple's Proposal	Samsung's Proposal
Parties file Joint Claim Construction and Prehearing Statement on Apple's patents, limited to ten total terms in dispute (Patent L.R. 4-3)	Oct. 3, 2011	Dec. 23, 2011
Deadline to Amend Pleadings	Oct. 3, 2011	Dec. 23, 2011
Close of claim construction discovery	Oct. 26, 2011	Jan. 23, 2011
Apple's Opening Claim Construction Brief on Apple's patents	Oct. 31, 2011	Feb. 6, 2012
Samsung's Claim Construction Opposition on Apple's patents	Nov. 14, 2011	Feb. 21, 2012
Apple's Claim Construction Reply on Apple's patents	Nov. 21, 2011	Feb. 28, 2012
Markman Tutorial on Apple's patents	[To be supplied by Court]	
Claim Construction Hearing on Apple's patents	[To be supplied by Court]	March 13, 2012
Local Patent Rule 3-7 Disclosures on Apple's patents	Dec. 19, 2011	50 days after Court issues claim construction order
Fact discovery cut-off	Dec. 19, 2011	90 days after Court issues claim construction order
Initial expert disclosures/reports		150 days after Court issues claim construction order
Rebuttal expert reports	Jan. 3, 2012	210 days after Court issues claim construction order
Close of expert discovery	Jan. 16, 2012	220 days after Court issues claim construction order
Deadline for dispositive motions	Jan. 19, 2012	250 days after Court issues claim construction order

Event	Apple's Proposal	Samsung's Proposal
Hearing on dispositive motions	Feb. 23, 2012 (if motions filed Jan. 19)	-
Final pretrial conference	February 29, 2012	330 days after Court issues claim construction order
Jury trial begins on Apple's claims	March 7, 2012	337 days after Court issues claim construction order

Comparison of Proposed Schedules for Samsung's Case:

Event	Apple's Proposal	Samsung's Proposal
Initial Disclosures Due	Sept. 7, 2011	Sept. 7, 2011
Samsung serves infringement contentions on Samsung's patents and produces required documents (Patent L.R. 3-1, 3-2)	Sept. 7, 2011	Sept. 7, 2011
Apple serves invalidity contentions on Samsung's patents and produces required documents (Patent L.R. 3-3, 3-4)	Nov. 9, 2011	Oct. 24, 2011
Exchange of proposed claim terms for construction on Samsung's patents (Patent L.R. 4.1(a))	Dec. 2, 2011	Nov. 7, 2011
Parties exchange preliminary claim constructions on Samsung's patents and identify supporting evidence and experts (Patent L.R. 4-2)	Dec. 30, 2011	Dec. 5, 2011
Parties file Joint Claim Construction and Prehearing Statement on Samsung's patents (Patent L.R. 4-3)	Jan. 20, 2012	Dec. 23, 2011
Deadline to Amend Pleadings	Jan. 20, 2012	Dec. 23, 2011
Close of claim construction discovery on Samsung's patents	March 2, 2012	Jan. 23, 2012
Samsung's Opening Claim Construction Brief on Samsung's patents	March 16, 2012	Feb. 6, 2012

Event	Apple's Proposal	Samsung's Proposal
Apple's Claim Construction Opposition on Samsung's patents	March 30, 2012	Feb. 21, 2012
Samsung's Claim Construction Reply on Samsung's patents	April 13, 2012	Feb. 28, 2012
Markman Tutorial on Samsung's patents	[To be supplied by Court]	
Claim Construction Hearing on Samsung's patents	[To be supplied by Court]	March 13, 2012
Local Patent Rule 3-7 Disclosures on Samsung's patents	Jan. 25, 2013	50 days after Court issues claim construction order
Fact discovery cut-off	Jan. 25, 2013	90 days after Court issues claim construction order
Initial expert disclosures/reports	Jan. 25, 2013	150 days after Court issues claim construction order
Rebuttal expert reports	March 8, 2013	210 days after Court issues claim construction order
Close of expert discovery	April 12, 2013	220 days after Court issues claim construction order
Deadline for dispositive motions	May 10, 2013	250 days after Court issues claim construction order
Final pretrial conference	June 14, 2013	330 days after Court issues claim construction order
Jury trial begins on Samsung's claims	June 21, 2013	337 days after Court issues claim construction order

Samsung's Statement:

The deadlines established by the Local Patent Rules are appropriate to govern all pre-Markman proceedings in this case. Samsung's proposed schedule then provides adequate time for

1 additional fact discovery, expert discovery, and summary judgment motions before proceeding to
 2 trial, timed from the Court's Markman Order. Given the number of patents and complexity of
 3 issues in this case, an expedited schedule would not provide time for either party to pursue
 4 adequate discovery, or for the Court to consider the parties' anticipated motions for summary
 5 judgment and narrow the issues for trial.

6 Samsung addresses Apple's unfounded request to sever its claims in section 15 above.
 7 Apple chose to file its claims in a forum with controlling local patent rules, rather than an
 8 accelerated forum like the International Trade Commission. Apple has failed to properly place its
 9 request before the Court, much less identify any compelling reason to depart from the local patent
 10 rules, or why Samsung's claims are not equally entitled to accelerated resolution. Samsung
 11 dismissed its separate action and filed its counterclaims to reduce unnecessary waste of resources
 12 by the Parties and the Court by trying the claims as merely related cases, as the Court recognized
 13 was proper at the June 17, 2011 hearing. Samsung's proposed schedule adheres to the Local
 14 Patent Rules and provides the parties adequate time to develop and try their respective claims.

15 **Samsung's Proposed Schedule for Apple's and Samsung's Claims**

Event		Samsung's Proposal
Initial Disclosures Due		September 7, 2011
Party asserting infringement serves infringement contentions and produces required documents (Patent L.R. 3-1, 3-2)		September 7, 2011
Party asserting invalidity serves invalidity contentions and produces required documents (Patent L.R. 3-3, 3-4)		October 24, 2011
Parties propose claim terms for construction (Patent L.R. 4-1)		November 7, 2011
Parties exchange preliminary claim constructions and identify supporting evidence and experts (Patent L.R. 4-2)		December 5, 2011

Event		Samsung's Proposal
Parties file Joint Claim Construction and Prehearing Statement, limited to ten total terms in dispute (Patent L.R. 4-3)		December 23, 2011
Deadline to Amend Pleadings		December 23, 2011
Close of claim construction discovery		January 23, 2012
Opening Claim Construction Brief on Asserted Patents		February 6, 2012
Claim Construction Oppositions		February 21, 2012
Claim Construction Reply		February 28, 2012
Markman Tutorial		[To be supplied by Court]
Claim Construction Hearing		March 13, 2012
Local Patent Rule 3-7 Disclosures		50 days after Court issues claim construction order
Fact discovery cut-off		90 days after Court issues claim construction order
Initial expert disclosures/reports		150 days after Court issues claim construction order
Rebuttal expert reports		210 days after Court issues claim construction order
Close of expert discovery		220 days after Court issues claim construction order
Deadline for dispositive motions ⁴		250 days after Court issues claim

⁴ Required by Northern District Standing Order on Case Management Statements.

Event		Samsung's Proposal
		construction order
Final pretrial conference		330 days after Court issues claim construction order
Jury trial begins		337 days after Court issues claim construction order

18. Trial

Apple's Statement: Apple has demanded a jury trial for its claims against Samsung in Apple's case, and for Apple's counterclaims in reply in Samsung's case.

For Apple's Case: Apple believes a 10 day trial is sufficient for its case against Samsung.

For Samsung's Case: Apple believes a 15 day trial is necessary for Samsung's case against Apple.

Samsung's Statement:

Four weeks for a jury trial will provide adequate time for both Apple's and Samsung's claims. Samsung currently believes that parties should equitably split trial time, but reserves the right to seek additional time if it becomes necessary based on the status of the Parties' respective claims at the time of trial.

19. Disclosure of Non-Party Interested Entities or Persons

The parties have filed Certifications of Interested Persons or Entities pursuant to Civil Local Rule 3-16.

20. Other Matters

Patent Local Rule 2-1(a) requires the parties to meet and confer on the following additional topics:

a. (1) Proposed modification of the obligations or deadlines set forth in the Patent Local Rules to ensure that they are suitable for the circumstances of the particular case.

b. (2) The scope and timing of any claim construction discovery including disclosure of and discovery from expert witnesses.

1 The Parties' proposed schedules address the local patent rules and the timing of claim
2 construction discovery.

3 **c. (3) The format of the Claim Construction Hearing, including whether**
4 **the Court will hear live testimony, the order of presentation, and the**
5 **estimated length of the hearing.**

6 **Apple's Statement:**

7 *For Apple's Case:* Apple proposes one day for the Claim Construction Hearing in its case
8 against Samsung, with one half day per side. Apple does not propose that the parties present live
9 witness testimony during the hearing.

10 *For Samsung's Case:* As above.

11 **Samsung's Statement:**

12 Pursuant to Local P.R. 2-1(a) Samsung reserve the right to present live testimony at the
13 Claim Construction Hearing. Samsung estimates that the length of the Claim Construction
14 Hearing will be two days. Samsung proposes that the Hearing begin with Apple's presentation on
15 the Apple Patents, Samsung's presentation on the Apple Patents, Samsung's presentation on the
16 Samsung patents, and Apple's presentation on the Samsung patents.

17 **d. (4) How the parties intend to educate the Court on the technology at**
18 **issue.**

19 **Apple's Statement:**

20 Apple proposes one half day for a technology tutorial in connection with each of the two
21 Markman hearings that Apple has proposed. Time would be split evenly per side. Apple does
22 not propose that the parties present live witness testimony during the tutorial.

23 **Samsung's Statement:**

24 Samsung respectfully suggests that the parties and the Court would benefit from a
25 technology tutorial to assist the Court on the technology at issue. Samsung proposes a tutorial of
26 approximately one day, held before the Claim Construction Hearing, in which each side will have
27 three hours of time to make a presentation on the technology. The tutorial presentation may be by
28 counsel or by an expert retained by each side or in whatever format the Court prescribes.

Samsung proposes that unless the Court prescribes a format for the presentations at the Claim

1 Construction technology tutorial, the Parties shall meet and confer no later than 30 days prior to
2 the Claim Construction Hearing to discuss and finalize how they will make their presentations.
3 Samsung reserves the right to present live witness testimony during the tutorial.

4 **e. Service of Documents**

5 The parties agree to service by email, with overnight delivery (such as Federal Express)
6 for lengthy exhibits. Service executed in that manner after August 17, 2011 will be considered
7 “actual delivery” under Civil Local Rule 5-5(a)(1) on the day that the documents are emailed and
8 delivered to the courier for overnight delivery.

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1 Dated: August 19, 2011

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Dated: August 19, 2011

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ATTESTATION OF E-FILED SIGNATURES

I, Victoria F. Maroulis, am the ECF User whose Id and password are being used to file this Joint Case Management Conference Statement. In compliance with General Order 45, X.B., I hereby attest that Michael A. Jacobs has concurred in this filing.

Dated: August 19, 2011

By: _____ /s/Victoria F. Maroulis